

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 UNITED STATES OF AMERICA

4 v.

18 CR 15 (AKH)

5 GEORGE TROPIANO,

Sentence

6 Defendant.

7 -----x

8 New York, N.Y.  
9 March 29, 2019  
12:10 p.m.

10 Before:

11 HON. ALVIN K. HELLERSTEIN

12 District Judge

13  
14  
15  
16 APPEARANCES

17 GEOFFREY S. BERMAN

18 United States Attorney for the  
Southern District of New York

19 JASON M. SWERGOLD

Assistant United States Attorney

20  
21 DAVID BERTAN

JACQUELINE E. CISTARO

22 Attorneys for Defendant

1 (Case called)

2 MR. SWERGOLD: Jason Swergold for the United States.

3 THE COURT: Good afternoon.

4 MR. BERTAN: David Bertan for Mr. Tropiano, your  
5 Honor. I am assisted at counsel table by Jacqueline Cisdaro as  
6 part of the Southern District internship program.

7 THE COURT: Good morning. Thank you for taking on  
8 that program.

9 Good morning, Mr. Tropiano. It is my duty to sentence  
10 you today, Mr. Tropiano. I start with the pre-sentence  
11 investigation report. Have you seen it?

12 THE DEFENDANT: Yes, your Honor, I have.

13 THE COURT: Have you reviewed it with Mr. Bertan?

14 THE DEFENDANT: Yes, I have, your Honor.

15 THE COURT: Mr. Bertan, are there any factual errors  
16 in the report?

17 MR. BERTAN: None to the report, your Honor.

18 THE COURT: Mr. Swergold, does the government have  
19 any?

20 MR. SWERGOLD: No, your Honor.

21 THE COURT: I find the facts as set out in the  
22 pre-sentence investigative report.

23 Mr. Tropiano's plea was taken by Judge Cott on  
24 December 12, 2018, and approved by me December 26, 2018.

25 The next step is to deal with the guidelines. They

are a little complicated. The base calculation is 19 under 2E1.1. The particular crime of extortion is covered by section 2B3.2(c). That gives a base level of 18, plus an upward adjustment of 2 because of the threat to bodily harm, plus 3 because the amount demanded was more than \$500,000 and less than \$4,500,000, creating a net offense level of 23. Because there was timely acceptance of responsibility, 3 levels are taken off, which brings us to level 20 as the net offense behavior level.

Mr. Tropiano has 4 criminal history points, putting him into category III under the sentencing guidelines criminal history. A level of 20 and a category of III gives him a sentencing range of 41 to 51 months followed by 1 to 3 years of supervised release.

Do I have it right, Mr. Swergold?

MR. SWERGOLD: Yes, you do, your Honor.

THE COURT: Mr. Bertan?

MR. BERTAN: Yes.

THE COURT: I so find.

Mr. Tropiano is 69 years old. He is a citizen of the United States. I'll leave the rest to counsel. Mr. Bertan, do you want to tell me about your client?

MR. BERTAN: Briefly, your Honor.

THE COURT: I have your submission. I read it. I have the government's submission, and I've read it. Please

1 feel free to tell me whatever you think I should know.

2 MR. BERTAN: As outlined in my submission, your  
3 Honor --

4 THE COURT: I know. Go ahead. Your client would like  
5 to hear it.

6 MR. BERTAN: One of the issues is his current health.  
7 He is, as you noted, 69 years old. He has some medical issues.  
8 Based on those facts alone, I think there should be some  
9 leniency regarding his sentence. I have laid that out pretty  
10 clearly in the letter. If there is anything in the letter you  
11 would like me to ask you about, I'd be happy to answer it.

12 THE COURT: No.

13 MR. BERTAN: What I would like to talk about and one  
14 of the things that always gives me pause when it comes to  
15 advocating on behalf of a client at sentencing is the ask: what  
16 is the right number? Where do I come out and what is it that I  
17 request on behalf of my client? I had a little bit of help in  
18 this case because probation gave a recommendation of 24 months.  
19 But it is still a little complicated to decide what is the  
20 right amount.

21 As I looked through the letters in support that you  
22 have, I realized I got a lot of help from the people in Mr.  
23 Tropiano's life. It is not just the people who he has dealt  
24 with. What I think you see in those letters is he has had an  
25 impact on the people in his community, a very positive impact

1 on the people in his community over the course of his adult  
2 life. He has coached football and baseball and has instilled  
3 in his players an attitude of respect for authority, respect  
4 for your competition, respect for the sport, and respect for  
5 yourself in giving 110 percent.

6 You have letters from family members whose kids were  
7 coached by him which talk about the impact that he has had on  
8 their children. You have letters from Mr. Laino, if I  
9 pronounced that correctly, who talks about the impact that Mr.  
10 Tropiano's coaching and guidance had on him. Mr. Waleed talks  
11 about it as well.

12 When you look at those actions and you see who Mr.  
13 Tropiano is, not just as some numbers in a guideline  
14 calculation or some objective biographical facts in a probation  
15 report, there is more to him than which this case represents.  
16 One of the things that struck me as I learned more about Mr.  
17 Tropiano was, I have seen this and I'm sure the Court has seen  
18 it, where somewhere between plea negotiations starting and  
19 sentence date, someone starts getting involved in charity work,  
20 they start doing good things for their community. As I called  
21 it in my letter, that's just surface paint. That's not what we  
22 have here.

23 We have a man who has been involved in his community  
24 helping, giving back a lot over the course of his life. He has  
25 worked with the teams. He has worked with the Teddy Atlas

Foundation. The best line that I saw in all of the letters was from Denis Hamill when he talks about the daily mitzvahs that Mr. Tropiano does. The facts of the case are clear. Probation lays it out. I'm sure the government will talk about it. There is more to him than that.

What he has done with his community, what he has done with his own children, the way he has raised them, how his children have affected him in his life I think merits some consideration. I don't want to sit and talk about his age. I don't want to stand here and discuss his health issues.

THE COURT: It's hard to talk about age with me.

MR. BERTAN: It's all about perspective, your Honor. I understand my audience. But looking at what he has done in his life is how you can craft the appropriate sentence for Mr. Tropiano. He is going to be stepping into jail. I think a year and a day is the appropriate amount of time he should spend there.

If you have any questions, I'm happy to answer them.

THE COURT: Your argument is eloquent and your letter is eloquent.

MR. BERTAN: Thank you, your Honor.

THE COURT: But you say nothing about the crime. I am sentencing him for the crime he committed.

MR. BERTAN: Your Honor, my focus in this is to show you who he is other than as a defendant. The crime itself, the

1 facts are laid out. We don't object to them. Probation makes  
2 it clear. I'm sure the government will discuss it in detail.

3 He is truly remorseful for what he has done. I don't  
4 know if you noticed this, but family is not here. He made a  
5 conscious decision not to have his family here because he is  
6 tremendously embarrassed about what he has done here. He is  
7 very remorseful about it. His letter makes that clear. He did  
8 something bad. He committed a crime. He admitted to it, he  
9 accepted responsibility. I don't know what more there is to  
10 say about it.

11 THE COURT: The crime was a rather nasty crime. It's  
12 visiting a number of times a person who had a judgment of money  
13 owed to him and in effect saying to him if you don't reduce  
14 your judgment substantially, there will be something to be paid  
15 to you, and that is say hello to your dad. It is clear from  
16 the circumstances that his dad had been dead for a number of  
17 years and was killed in gang violence, which is what Mr.  
18 Tropiano threatened.

19 MR. BERTAN: To make it clear, I don't believe he died  
20 as a result of gang violence.

21 MR. SWERGOLD: He didn't die, your Honor. He was shot  
22 in the head but he survived. Just so the record is clear.

23 THE COURT: All right.

24 MR. BERTAN: I don't believe there is any question  
25 that whatever that incident was, Mr. Tropiano was not involved

1 in that.

2 THE COURT: I didn't say he was. But it is a threat.  
3 He's telling the fellow who he is extorting that if you don't  
4 do what I tell you to do, you're going to be shot in the head.

5 MR. BERTAN: Your Honor, I don't know that I would  
6 characterize it as shot in the head. There is an implied  
7 threat. But again I would note there was no overt threat,  
8 there was no actual violence, there was no weapon used.

9 THE COURT: That's true. If there had been, this  
10 crime would have been more serious.

11 MR. BERTAN: We would have been dealing with a  
12 different guidelines calculation.

13 THE COURT: Much higher. Much, much higher. And this  
14 is not the only such incident. He went to jail in 2013 for an  
15 incident where he punched and kicked the victim in the head and  
16 face, also an extortion. He was on parole at the time. This  
17 was not so many years ago. So it is hard to say, as you say,  
18 it is aberrational. It is not aberrational. It is a way of  
19 life.

20 MR. BERTAN: Your Honor, if I may, with regard to the  
21 incident, the assault, that stems from an attack on Mr.  
22 Tropiano's grandson. The victim in that case hit his grandson  
23 and he hit the person back. That had nothing to do with  
24 extortion in any way.

25 THE COURT: Punching and kicking in the face is



1 violent, is more than just defense. You have outlined it very  
2 well and you sum it up in your first paragraph. Mr. Tropicano  
3 is a father and he has been a father to his children. You say  
4 he taught them good things. But what kind of a model is he  
5 when he engaged in bad things? He is a husband.

6 MR. BERTAN: Your Honor --

7 THE COURT: Yes.

8 MR. BERTAN: There are times when the lesson is do as  
9 I say, not do as I do. I think in this case that lesson was  
10 imparted to his family and, by extension, to his community.  
11 I'm asking that you take that into consideration as you decide  
12 what the appropriate sentence will be.

13 THE COURT: Thank you, Mr. Bertan.

14 MR. BERTAN: Thank you.

15 THE COURT: Mr. Swergold.

16 MR. SWERGOLD: Thank you, your Honor.

17 With respect to the crime in this case, your Honor is  
18 correct, it is a particularly nasty crime. Your Honor actually  
19 had the benefit of listening to the victim of that crime  
20 because he testified in the Cammarano and Zancocchio trial.  
21 That was Mr. Grzic. The facts are set forth in the PSR, and I  
22 think they do speak for themselves in terms of the level of  
23 fear instilled in this victim.

24 He went to the police. He hired a private bodyguard.  
25 He relocated his family because he really was in fear for his

1 life from the threats made by Mr. Tropiano. These were not  
2 threads in isolation. This was part of the racketeering  
3 activity of the Bonanno organized crime family.

4 THE COURT: Of which he was an acting captain.

5 MR. SWERGOLD: In which he was a leader, had a  
6 leadership position at one point as an acting captain.

7 What really jumps off the page here, your Honor, both  
8 from Mr. Bertan's arguments and from what actually happened in  
9 this case is that members of La Cosa Nostra think they can  
10 operate in a system that runs parallel to what the law actually  
11 requires. Mr. Tropiano has done this time and again. Even if  
12 he is telling people in his community to do the right things,  
13 telling his kids to do the right things, he is not doing that.

14 He lied to a grand jury to protect members of La Cosa  
15 Nostra and their illegal activities. Mr. Grzic had a valid  
16 court judgment, and La Cosa Nostra stepped in and said that's  
17 not how we settle things in court, we do it our own way,  
18 through intimidation and threats of violence.

19 There has to be a punishment in this case that sends a  
20 message that this is serious conduct that needs to be punished,  
21 that society does not tolerate people playing in their own set  
22 of rules. There is one set for everybody to abide by, and that  
23 has to happen in this case.

24 THE COURT: I'm not sure we need to reach that far,  
25 Mr. Swergold. Just taking the man as he is, when he was a kid

1 of 18, according to the PSR, he broke and entered the  
2 unoccupied home in Brooklyn, he and four others. This was not  
3 a burglary. He destroyed the walls and the stairway. That is  
4 the kind of thing that you do when you want to get back at  
5 someone to teach a lesson to someone. It is what the gang  
6 does. He was granted status as a youthful offender in that  
7 case.

8 Then there was this gas station incident where  
9 Tropiano and another punched and kicked the complainant. It's  
10 a pattern in Mr. Tropiano's life as the enforcer. Without  
11 looking into the overall system of comparative law, I think we  
12 have enough to consider Mr. Tropiano's punishment.

13 MR. SWERGOLD: One point I would make on those prior  
14 cases, your Honor, as well as the more recent assault in 2013,  
15 Mr. Bertan is right, that particular assault did not have  
16 anything to do with La Cosa Nostra. It was a personal dispute.  
17 Whatever he did after it in terms of whether --

18 THE COURT: It shows.

19 MR. SWERGOLD: You're right, it shows the way he deals  
20 with problems. I can't speak to these much, much, much older  
21 cases from the '60s and the '70s, but one thing that is clear  
22 is that whenever he gets in trouble, he doesn't get punished  
23 for it, he doesn't go to jail. I think a guidelines sentence  
24 is appropriate here to punish him, deter him, and to deter  
25 other members of La Cosa Nostra because the Mafia sees going to

1 jail as a cost of doing business. You get a year and a day,  
2 that is nothing. That is no cost at all.

3 THE COURT: Thank you, Mr. Swergold.

4 Mr. Tropiano, do you want to address me?

5 MR. BERTAN: Your Honor, if I may?

6 THE COURT: Sure.

7 MR. BERTAN: Very quickly.

8 THE COURT: Sure.

9 MR. BERTAN: First of all, the cases that you referred  
10 to in the probation report go back to 1967 and 1968.

11 THE COURT: They are old.

12 MR. BERTAN: They are very old.

13 THE COURT: I recited it because it shows a way of  
14 life.

15 MR. BERTAN: Your Honor, I respectfully would differ  
16 with that. If you look at that, you go from 1967 with nothing  
17 until 2013, when he defends his grandson. Early '70s, your  
18 Honor, you're talking almost 40 years.

19 Secondly, I would note, and I'm a little reluctant to  
20 talk about age, at Mr. Tropiano's age a year and a day is not  
21 nothing. It is a substantial sentence. I would like the Court  
22 to keep that in mind given his age and his physical condition.

23 THE COURT: I understand. Tell me about the physical  
24 condition.

25 MR. BERTAN: There isn't anything to add other than

1 what I wrote in the letter. He takes a number of medications  
2 for his heart trouble. He just completed a detox program so he  
3 could stop taking the prescription oxycodone. As part of my  
4 application, at the end I was going to ask that he be  
5 designated to the RDAP facility to help him continue with that.

6 THE COURT: I'll do that.

7 MR. BERTAN: He is in pretty much constant pain from  
8 his injuries. That is what the oxycodone was intended to help,  
9 and it turned into something else.

10 Thank you.

11 THE COURT: Mr. Tropiano, do you want to address me?

12 THE DEFENDANT: Yes, your Honor. Some of the things I  
13 did in the past when I was young, I was trying to get the  
14 attention of my father. It didn't work.

15 THE COURT: You were trying to do what?

16 THE DEFENDANT: To get the attention of my father to  
17 be a father figure. That didn't work. I want to thank you for  
18 assigning David to my case. And I'm at your mercy.

19 THE COURT: Thank you, sir.

20 THE DEFENDANT: Thank you.

21 THE COURT: It's always difficult to sentence a  
22 person. The considerations I have to follow under the statute  
23 are not clear and they conflict with one another. The best I  
24 can, I'll go through them and deal with the custodial part of  
25 the sentence that I wish to impose.

1           The first aspect, reflecting the nature and  
2           circumstances of the offense, there are two main  
3           considerations: the nature and circumstance of the offense and  
4           the history and characteristics of the defendant.

5           As to the offense, the punishment has to reflect its  
6           seriousness. Threatening others is very serious. We can't  
7           enjoy our families, our liberties, unless we are secure. If  
8           people threaten us so we can't enforce what is justly ours or  
9           enjoy what is justly ours, that's an enormous impingement on  
10          the freedom and liberty of another person, not to speak of the  
11          endangerment to life and health. The crime is very serious.

12          I have to promote respect for the law. What will be  
13          the respect if someone engaged in such conduct as part of a  
14          racketeering enterprise gets off with a year and a day or  
15          something like that, as Mr. Bertan suggests? I think people  
16          will lose respect for the law.

17          I have to provide just punishment for the offense,  
18          which in effect meets what I have just been talking about.

19          Another consideration is to afford deterrence to  
20          future conduct not only of Mr. Tropiano but also of his friends  
21          and colleagues and others. The sentence has to be something  
22          that others will pay attention to.

23          And to protect the public from further crimes of the  
24          defendant. I would like to think that at 69 Mr. Tropiano's  
25          life of crime is finished, but one does not know. The other

1 factors are more important and cogent here.

2 I also need to consider the history and  
3 characteristics of the defendant. It's mixed. He's got a  
4 history of criminal conduct. He also has a history of good  
5 works in his community, of responsibility for his family, in  
6 the normal and mundane activity being a normal and contributing  
7 citizen.

8 Putting all this together, I think the guidelines have  
9 it right. I have considered the recommendation of probation  
10 for 24 months, but I don't think it is well taken. I think a  
11 guidelines sentence is appropriate. I consider the good works  
12 that Mr. Bertan has cited as pushing me towards the bottom of  
13 the guidelines. I think a sentence of 41 months is  
14 appropriate, followed by 3 years of supervised release.

15 There is only one count, right, Mr. Swergold?

16 MR. SWERGOLD: One count that he has pled guilty to,  
17 yes, that's correct.

18 THE COURT: Do you want a recommendation where it  
19 should be served, Mr. Bertan?

20 MR. BERTAN: Your Honor, the recommendation would be  
21 somewhere within the metropolitan area at a facility that has  
22 the RDAP program.

23 THE COURT: RDAP, what is that?

24 MR. BERTAN: Camp Butner, which is in North Carolina  
25 would knock out my request for keeping it local, but it does

1 have the RDAP program.

2 THE COURT: It does not?

3 MR. BERTAN: It does.

4 THE COURT: How to you spell RDAP?

5 MR. BERTAN: R-D-A-P. It is also the Bureau of  
6 Prisons medical facility.

7 THE COURT: Yes, I'm familiar with it. The  
8 recommendation is to confine Mr. Tropiano at Camp Butner so he  
9 can take advantage of the RDAP procedure and take care of his  
10 medical ailments. If that is not available, the secondary  
11 request is for something proximate to the community here so it  
12 would promote visits by his family.

13 Is there forfeiture in this case, Mr. Swergold?

14 MR. SWERGOLD: Your Honor, the government is not  
15 seeking forfeiture.

16 THE COURT: There is restitution in this case.

17 MR. SWERGOLD: Your Honor, so the record is clear, the  
18 government has reached out to a lawyer who was representing Mr.  
19 Grzic, the victim in this case, who helped facilitate him  
20 coming back and forth to testify. He was advised of the  
21 proceedings. He did not want to be any further involved. I  
22 think he wants to close that chapter.

23 THE COURT: So there is no restitution?

24 MR. SWERGOLD: That's correct.

25 THE COURT: As to the 3 years of supervised release, I



1 impose the conditions suggested by probation, namely, the  
2 mandatory conditions set out at the bottom of page 31 of the  
3 PSIR.

4 With regard to testing, the letter from Dr. Savarese  
5 suggests that I should have this testing. Do you agree, Mr.  
6 Bertan?

7 MR. BERTAN: Your Honor, I think the standard testing  
8 within the bounds of supervised release would be sufficient.  
9 He is going to be tested within a few days of his release and  
10 then randomly thereafter.

11 THE COURT: That's what it is. He must submit to one  
12 drug test within 15 days of release from imprisonment and at  
13 least two periodic drug tests thereafter as determined, it says  
14 by the Court, but I would say as determined by the probation  
15 office. And Mr. Tropiano must cooperate in the collection of  
16 DNA as directed by the probation office. There are others, 13  
17 standard conditions, spelled out on pages 32 and 33. I impose  
18 them.

19 There are special conditions. Submission to a search  
20 as described in the center of page 33 is imposed.

21 Since there is no fine which I'm imposing and no  
22 restitution, there is no need to provide the probation officer  
23 with access to any requested financial information, and I  
24 decline to order that. Supervision will be by the district of  
25 Mr. Tropiano's residence.

1           There is a mandatory special assessment of \$100.

2           I think we've touched all the bases. Am I right, Mr.  
3 Swergold? I have to advise him of his appellate rights

4           MR. SWERGOLD: That and, your Honor, the government  
5 moves to dismiss the open counts.

6           THE COURT: Not yet. Is there anything up to this  
7 point that I have missed, Mr. Bertan?

8           MR. BERTAN: No, your Honor. My client has just  
9 informed me that he believes Ft. Dix also has the RDAP program.

10          THE COURT: The recommendation is the closest facility  
11 to New York that has the RDAP program.

12          MR. BERTAN: Thank you. I would also like to address  
13 the surrender date.

14          THE COURT: I didn't get there yet.

15          The punishment I read out is so ordered.

16          When do you want Mr. Tropiano to surrender?

17          MR. BERTAN: May 1st, your Honor.

18          MR. SWERGOLD: The government has no objection, your  
19 Honor.

20          THE COURT: What day of the week is that?

21          THE CLERK: Wednesday.

22          THE COURT: May 1 at the facility designated by the  
23 Bureau of Prisons.

24          Mr. Tropiano, I advise you that under the Constitution  
25 you have a right to appeal. You should discuss with Mr. Bertan

whether or not you wish to file a notice of appeal. If your client wishes that you do, Mr. Bertan, I instruct you to do so on a timely basis.

MR. BERTAN: I will.

THE COURT: If you can't afford a lawyer, Mr. Tropicano, a lawyer will be assigned free of charge.

THE DEFENDANT: Thank you.

MR. SWERGOLD: Your Honor, the government moves to dismiss the open counts against Mr. Tropicano in the S2 indictment and to dismiss the two underlying indictments against Mr. Tropicano.

THE COURT: So ordered.

That concludes the sentencing. I wish you good health and good luck, Mr. Tropicano.

(Adjourned)